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7  
8 IN THE UNITED STATES DISTRICT COURT FOR THE  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 UNITED STATES OF AMERICA,	)	CR-S-04-0069 MCE
	)	
12 Plaintiff,	)	STIPULATION FOR FINAL
	)	ORDER OF FORFEITURE RE:
13 v.	)	REAL PROPERTY AT 2905 BIRD
	)	ROCK ROAD, PEBBLE BEACH,
14 LARRY J. WELLS,	)	CALIFORNIA AND ORDER
	)	THEREON
15 Defendant.	)	
	)	
16	)	
DIANNA L. WELLS and WASHINGTON	)	
17 MUTUAL BANK,	)	
	)	
18 Petitioners.	)	
	)	

19  
20 IT IS HEREBY STIPULATED by and between plaintiff United States  
21 of America and petitioners Dianna L. Wells and Washington Mutual  
22 Bank, to compromise and settle their interests in the following  
23 property (hereinafter, the "Property"), and to consent to the entry  
24 of a Final Order of Forfeiture as to the following asset pursuant to  
25 Fed. R. Crim. P. 32.2, 18 U.S.C. § 982(a)(1), and/or 18 U.S.C. §  
26 982(b)(1), incorporating 21 U.S.C. § 853(p):

27 Real property located at 2905 Bird Rock Road,  
28 Pebble Beach, California, APN: 007-661-004,  
recorded owners Larry J. Wells and Dianna L.

Wells, and more fully described as:

Lot 4 in Block 400, as shown on map entitled, map of "Tract No. 429, Monterey Peninsula Country Club No. 4" etc., filed April 9, 1963 in the office of the County Recorder of the County of Monterey, State of California in Volume 7 of "Cities and Towns", at page 87.<sup>1</sup>

This stipulation for Final Order of Forfeiture is entered into between the parties pursuant to the following terms:

1. On June 19, 2006, Larry J. Wells entered into a plea agreement in which he pled guilty to Counts Nineteen and Twenty-two of the Indictment, which charge money transactions in criminally derived property in violation of 18 U.S.C. § 1957, and Counts Seven and Eight, which charge wire fraud in violation of 18 U.S.C. § 1343. The Court entered a Preliminary Order of Forfeiture on February 12, 2007. Pursuant to 21 U.S.C. § 853(n)(1), the United States gave direct notice to Dianna L. Wells and Washington Mutual Bank, and published notice in The Daily Recorder on February 23, March 2, and 9, 2007. Dianna L. Wells filed a Petition for Ancillary Hearing on March 19, 2007, claiming an undivided one-half interest in the Property. Washington Mutual Bank filed a Petition for Ancillary Hearing on March 26, 2007, claiming a lien holder interest in the Property. No other persons or entities have come forward and the time for maintaining a claim has expired.

2. The parties hereby stipulate that Dianna L. Wells has an undivided one-half interest in the Property and Washington Mutual Bank is a lien holder on the Property. Dianna L. Wells and Washington Mutual Bank each have a legal right, title, or interest

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<sup>1</sup> By separate application, the United States shall seek a final order of forfeiture as to other assets involved in this case.

1 in the Property, and that such right, title, or interest requires  
2 the Court to amend the Preliminary Order of Forfeiture pursuant to  
3 Fed. R. Crim. P. 32.2(c)(2) to account for the Petitioners'  
4 respective interests because such interests were vested in them  
5 rather than the Defendant at the time of the commission of the acts  
6 which give rise to the forfeiture of the Property. See 18 U.S.C. §  
7 982(b)(1) (incorporating 21 U.S.C. § 853(n)). The parties further  
8 stipulate, however, that Larry Wells has an undivided one-half  
9 ownership interest in the Property and the Preliminary Order of  
10 Forfeiture remains valid to the extent it orders the forfeiture of  
11 his interest.

12 3. The parties agree that the sale of the Property shall be  
13 handled by the U.S. Marshals Service in a commercially reasonable  
14 manner. The U.S. Marshals Service shall have sole authority to  
15 select the means of sale, including sale by internet or through a  
16 licensed real estate broker, and shall have sole authority over the  
17 marketing and sale of the Property. Dianna L. Wells shall vacate  
18 the Property by December 1, 2007. Until she vacates the Property,  
19 Dianna L. Wells shall maintain the Property in good condition and  
20 repair, and provide the U.S. Marshals Service or its agents with  
21 reasonable access to the Property to facilitate its appraisal,  
22 marketing and sale. Dianna L. Wells further shall remove all  
23 personal possessions, and the personal possessions of any former  
24 occupant, including all vehicles, furniture, and trash. Any and all  
25 of Dianna L. Wells' personal possessions, and the personal  
26 possessions of any former occupant, not removed will be disposed of  
27 by the United States without further notice. Any cost incurred by  
28 the United States for disposal of personal possessions shall be

1 deducted from the payment to petitioner Dianna L. Wells as set forth  
2 in ¶ 4.f below.

3 4. The United States agrees that upon entry of a Final Order  
4 of Forfeiture and sale of the Property pursuant to the Final Order  
5 of Forfeiture, the United States will not contest payment to Dianna  
6 L. Wells and Washington Mutual Bank from the proceeds of the sale,  
7 after payment of outstanding real property taxes assessed against  
8 the Property and expenses reasonably incurred by the U.S. Marshals  
9 Service in connection with its custody and sale of the Property, the  
10 following:

11 a. All unpaid principal due to the petitioner  
12 Washington Mutual Bank under the Deed of Trust  
13 recorded in the Monterey County, California,  
14 Official Records as instrument number  
15 2003128164, dated October 7, 2003 and recorded  
16 October 21, 2003. Said Deed of Trust secured a  
17 Promissory Note in the original amount of  
18 \$1,467,000.00 dated October 7, 2003. As of  
19 March 13, 2007, the principal balance due and  
20 owing on the Note was \$1,476,692.45. Accrued  
21 interest due on the Note through March 13, 2007  
22 was \$12,779.79. Interest, subject to change,  
23 was accruing at the rate of \$302.74 per diem  
24 commencing March 14, 2007. The total amount  
25 necessary to pay the Note in full as of March  
26 13, 2007 was \$1,489,889.77.

27 b. All unpaid interest at the contractual base rate  
28 (not the default rate) under the above Note,

1           secured by the Deed of Trust, until the date of  
2           payment.

3           c.   To Washington Mutual Bank: reasonable attorney's fees  
4           not to exceed \$2,500.00; all costs and expenses for  
5           servicing the subject loan and preservation of the  
6           Property to the extent recoverable under the above  
7           Note, secured by the Deed of Trust; and any property  
8           insurance and property taxes paid by Washington  
9           Mutual Bank shall be reimbursed, until the date of  
10          payment.

11          d.   A total fee of not more than \$200 to process a  
12          beneficiary demand statement and to record a  
13          reconveyance of the Deed of Trust.

14          e.   The exact amount to be paid to Washington Mutual  
15          Bank shall be determined at the time of payment,  
16          but shall not be less than the amounts set forth  
17          above.

18          f.   To petitioner Dianna L. Wells, 50% of the net  
19          proceeds from the sale of the Property after the  
20          above disbursements.

21          g.   To the United States of America, 50% of the net  
22          proceeds from the sale of the Property after the  
23          above disbursements to be forfeited to the United  
24          States and disposed of as provided for by law.

25          5.   The payment to petitioners Dianna L. Wells and Washington  
26   Mutual Bank shall be in full settlement and satisfaction of all  
27   claims and petitions by Dianna L. Wells and Washington Mutual Bank  
28   to the Property indicted by the Grand Jury for the Eastern District

1 of California on or about February 25, 2004, and of all claims  
2 arising from and relating to the seizure, detention, and forfeiture  
3 of the Property. The payment to Dianna L. Wells and Washington  
4 Mutual Bank shall not include any penalty payments, including any  
5 prepayment penalties.

6 6. Upon payment, Dianna L. Wells and Washington Mutual Bank  
7 agree to assign and convey their respective security or other  
8 interests to the United States via recordable documents and to  
9 release and hold harmless the United States, and any agents,  
10 servants, and employees of the United States (and any involved state  
11 or local law enforcement agencies and their agents, servants, or  
12 employees), in their individual or official capacities, from any and  
13 all claims that currently exist or that may arise as a result of the  
14 Government's actions against and relating to the Property. As  
15 against the United States and its agents, petitioners Dianna L.  
16 Wells and Washington Mutual Bank agree to waive the provisions of  
17 California Civil Code § 1542, which provides: "A general release  
18 does not extend to claims which the creditor does not know or  
19 suspect to exist in his favor at the time of executing the release,  
20 which if known by him must have materially affected his settlement  
21 with the debtor." The release given under this paragraph shall  
22 apply only to conduct that has or may have occurred up to and  
23 including the date on which Washington Mutual Bank receives payment  
24 under the terms of this agreement. The waiver by Washington Mutual  
25 Bank of Civil Code § 1542 pertains only to the release given by  
26 Washington Mutual Bank under this agreement as to the subject  
27 Property. Washington Mutual Bank expressly reserves all rights, and  
28 does not release any party, for any cross-complaint it might have in

1 the event Washington Mutual Bank is sued by a third party for the  
2 actions of the United states or one of its agents, servants,  
3 employees or representatives.

4 7. Petitioner Washington Mutual Bank agrees not to pursue  
5 against the United States any other rights that it may have under  
6 the Promissory Note and/or Deed of Trust, including, but not limited  
7 to, the right to foreclose upon and sell the Property during the  
8 pendency of this proceeding or any post-forfeiture proceeding  
9 relating to the marketing and sale of the Property, and any right to  
10 assess additional interest or penalties except as specifically  
11 allowed herein.

12 8. Petitioners understand and agree that by entering into this  
13 stipulation of their interest in the Property, they waive any right  
14 to litigate further their ownership interest in the Property and to  
15 petition for remission or mitigation of the forfeiture. Thereafter,  
16 if this Stipulation for Final Order of Forfeiture is approved by the  
17 Court, then unless specifically directed by an order of the Court,  
18 Dianna L. Wells and Washington Mutual Bank shall be excused and  
19 relieved from further participation in this action.

20 9. Petitioners understand and agree that the United States  
21 reserves the right to void the stipulation if, before payment of the  
22 Promissory Note or lien, the U.S. Attorney obtains new information  
23 indicating that the petitioners are not "innocent owners" or "bona  
24 fide purchasers" pursuant to the applicable forfeiture statutes.  
25 The U.S. Attorney also reserves the right, in its discretion, to  
26 terminate the forfeiture at any time and release the Property. In  
27 either event, the United States shall promptly notify the  
28 Petitioners of such action. A discretionary termination of

1 forfeiture shall not be a basis for any award of fees.

2 Additionally, Washington Mutual Bank reserves the right to petition  
3 the Court for a modification of this order in the event it  
4 determines that the value of the subject Property is at an amount  
5 which may not be sufficient to satisfy its lien.

6 10. The parties agree to execute further documents, to the  
7 extent reasonably necessary, to convey clear title to the Property  
8 to the United States and to implement further the terms of this  
9 Stipulation. Each party agrees to bear its own costs and attorneys'  
10 fees, except as otherwise set forth herein.

11 11. Payment to the petitioners Dianna L. Wells and Washington  
12 Mutual Bank pursuant to this Stipulation is contingent upon a  
13 forfeiture of the Property to the United States, the United States'  
14 prevailing against any additional third parties alleging claims in  
15 an ancillary proceeding, and the Court's entry of a Final Order of  
16 Forfeiture. Further, the terms of this Stipulation shall be subject  
17 to approval by the United States District Court. Violation of any  
18 term or condition herein shall be construed as a violation of an  
19 order of the Court.

20 12. The court shall maintain jurisdiction over this matter to,  
21 inter alia, enforce the terms of this stipulation.

22 Dated: 10/17/07

McGREGOR W. SCOTT  
United States Attorney

23  
24 /s/ Courtney J. Linn  
COURTNEY J. LINN  
25 Assistant U.S. Attorney

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Dated: 10-16-07 /s/ Dianna L. Wells  
DIANNA L. WELLS  
Petitioner

State of California )  
County of Monterey )

On October 16, 2007 before me, Christina Wittrock, personally appeared DIANNA L. WELLS, ~~personally known to me~~ (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

CHRISTINA WITTROCK WITNESS my hand and official seal  
Commission #1579844  
Notary Public - California /s/ Christina Wittrock  
Monterey County Signature  
My Comm. Expires May 17, 2009

Dated: 10/16/07 /s/ Kirk R. Wagner  
~~ANNE SECKER~~ Kirk R. Wagner  
Attorney for Petitioner  
Dianna L. Wells

Dated: 10/15/07 /s/ Scott J. Stilman  
SCOTT J. STILMAN  
Attorney for Petitioner  
Washington Mutual Bank

(Original signatures retained by attorney)

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**ORDER**

The Court having received, read, and considered the foregoing Stipulation of the parties, and good cause appearing therefrom, the Stipulated Settlement is hereby ADOPTED and APPROVED, and the Court hereby enters a Final Order of Forfeiture on the terms set forth in the parties' Stipulated Settlement.

IT IS SO ORDERED.

Dated: October 19, 2007

A handwritten signature in blue ink, appearing to read "Morrison C. England, Jr.", is written over a horizontal line.

MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE